SUPREME COURT OF THE UNITED STATES

TERRY D. BARBER *v.* TENNESSEE

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE, WESTERN DIVISION

No. 94–7254. Decided February 21, 1995

The petition for a writ of certiorari is denied.

Opinion of JUSTICE STEVENS respecting the denial of the petition for a writ of certiorari.

On occasion it is appropriate to restate the settled proposition that this Court's denial of certiorari does not constitute a ruling on the merits. *United States* v. *Carver*, 260 U. S. 482, 490 (1923). See also *Singleton* v. *Commissioner*, 439 U. S. 940, 942–946 (1978) (opinion of STEVENS, J., respecting the denial of the petition for writ of certiorari). In this case, for example, there are valid reasons for the Court's decision to deny review. But this does not mean petitioner's challenge to his death sentence, based in part upon the trial judge's definition of an aggravating circumstance, lacks merit. Under the trial court's instruction, a jury could find an aggravating circumstance sufficient to impose the death penalty merely by concluding that a murderer's state of mind was "wicked or morally corrupt." Because such a state of mind is a characteristic of every murder, the instruction is plainly impermissible under this Court's holdings in *Godfrey* v. *Georgia*, 446 U. S. 420, 428–429 (1980) (striking down instruction allowing jury to find aggravating circumstance if murder was "'outrageously or wantonly vile, horrible and inhuman'"), and *Maynard* v. *Cartwright*, 486 U. S. 356, 363–364 (1988) ("'especially heinous, atrocious, or cruel'").

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ORDER LIST

TUESDAY, FEBRUARY 21, 1995

CERTIORARI -- SUMMARY DISPOSITION

93-1728 O'DRISCOLL, DOROTHEA V. HERCULES, INC., ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Tenth Circuit for further consideration in light of *McKennon* v. *Nashville Banner Publishing Co.*, 513 U. S. ____ (1995).

94-1097 HARRIS, JOAN V. HIRSH, PAUL

The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the Court of Appeals of New York for further consideration in light of *Hawaiian Airlines, Inc.* v. *Norris*, 512 U. S. ____ (1994).

94-6155 WHITMORE, RANDALL V. AVERY, SUPT., COMMUNITY CC

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further consideration in light of *Schlup* v. *Delo*, 513 U. S. ____ (1995).

94-7373 NAVE, EMMETT V. DELO, SUPT., POTOSI

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated and the case is